

1 *proposed*

2 ORDINANCE TO AMEND THE CITY CODE
3 REGARDING REGULATION OF STREET VENDING AND SPECIAL-EVENT PERMITS
4

5 Sec. 1. Revised division and section titles. The following division numbers and titles and section numbers and titles
6 shall apply to Article II of Chapter 54 of the City Code.

7 DIVISION 1. – GENERALLY

8 Sec. 54-25. - Purpose.
9 Sec. 54-26. - Definitions.
10 Secs. 54-27—54-83. - Reserved.
11

12 DIVISION 2. – TRANSACTIONS IN STREET RIGHT-OF-WAY INCLUDING SIDEWALKS

13 Sec. 54-84. - Interacting with or impeding traffic on roadways.
14 Sec. 54-85. - Median permits.
15 Sec. 54-86. - Requirements for permittees.
16 Sec. 54-87. - Exceptions for public service activities.
17 Sec. 54-88. - Prohibition on use of sales vehicle and sales gear to sell on street right-of-way; vending
18 machines.
19 Secs. 54-89—54-90. - Reserved.
20 Sec. 54-91. - Right-of-way sales activities.
21 Secs. 54-92—54-109. - Reserved.
22 Sec. 54-110. - Sidewalk seating permit.
23 Sec. 54-111. - Reserved.
24 Sec. 54-112. - Sales near DBAP, DPAC, or Durham Central Park.
25 Sec. 54-113. - Walk-up windows.
26 Sec. 54-114. - Sales near closed or blocked streets in conjunction with special-event permits.
27 Sec. 54-115. - Sales near permitted events in city parks, plazas, and properties.
28 Sec. 54-116. - Exemption for newspaper distribution.
29 Sec. 54-117. - Prohibitions cumulative.
30 Sec. 54-118. - Right-of-way sales activities presumed subject to section 54-88.
31 Secs. 54-119—54-139. - Reserved.
32

33 DIVISION 3 - RESERVED

34 DIVISION 4 – ISSUANCE, DISPLAY, AND TERMINATION OF PERMITS

35 Sec. 54-140. - Display of permit.
36 Sec. 54-141. - Termination and revocation of permit; review of decisions.
37 Secs. 54-142—54-187. - Reserved.
38

39 DIVISION 5. - OTHER PROVISIONS

40 Sec. 54-188. - Penalties for violations.
41 Sec. 54-189. - Privilege license ordinance not affected; refund of privilege tax.
42 Sec. 54-190. - Cumulative requirements.
43 Sec. 54-191. - Reservation of rights.
44 Sec. 54-192. - Severability.
45 Secs. 54-193—54-214. - Reserved.
46

47 Sec. 2. Repealed code sections. The following sections of the City Code are repealed: Section 54-89, Section 54-
48 107, section 54-108, section 54-109, section 54-111, and 54-139. All permits that have been issued pursuant to any
49 of those sections are terminated.

50 Sec. 3. Revisions to sections 54-25. Section 54-25 is revised to read:

51 **Sec. 54-25. Purpose.** This article is adopted to promote the health, safety, and welfare of the citizens, to
52 decrease the distractions and obstructions on sidewalks and other public facilities, and to promote business activity.

53 Sec. 4. Revisions to section 54-26. Sec. 54-26 is amended by deleting the definitions of “include” and “right-of-
54 way parking area,” and adding these definitions:

55 *Control*, with respect to real estate that is City-controlled or controlled by the City, is used as follows: The
56 City controls real estate when it has a possessory interest therein on account of or pursuant to a written or oral lease
57 or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by
58 law.

59 *Core downtown park* means any of the following three areas: (1) the park bounded by Parrish Street,
60 Mangum Street, Main Street, and a privately-owned property; (2) the triangle-shaped land at Five Points, bounded
61 on the northeast by West Main Street, on the south by West Chapel Hill Street, and on the west by privately-owned
62 property; and (3) CCB Plaza, which is bounded by Chapel Hill Street, Corcoran Street, Parrish Street, and Market
63 Street; provided, however, “core downtown park” is limited to the portion of each of those three areas that is owned
64 by the city of Durham and open to the general public, and to the times that it is open to the general public.

65 *Mobility vehicle* means a device that is designed for and intended to be used as a means of transportation
66 for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both
67 inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device
68 is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement.

69 *On-street parking space* means a space designated by the City or the State for parking a motor vehicle on a
70 street right-of-way.

71 *Right-of-way sales activities* means selling or offering to sell goods (i) using a sales vehicle on street right-
72 of-way or on any core downtown park, or (ii) by placing, directly or indirectly, goods offered for sale or samples of
73 goods offered for sale on street right-of-way or on any core downtown park.

74 *Sales gear* means a sales vehicle and all items that are brought by or at the direction of the seller or
75 salesperson for use by the seller, salesperson, or customers, including seats, power cords, trash containers, and goods
76 to be sold.

77 *Sales vehicle* means a vehicle, cart, stand, table, or other device or thing, whether or not wheeled, 12 inches
78 or more in height, that rests in whole or in part, directly or indirectly, on any street right-of-way or core downtown
79 park, while selling, or offering to sell, is occurring with the use of, from, or in connection with the vehicle, stand,
80 cart, table, or other device or thing. Without limiting the preceding sentence of this definition, “sales vehicle”
81 includes “mobile food unit” and “pushcart,” as those expressions are defined in Subchapter 18A of Title 15A of the
82 N. C. Administrative Code. A “sales vehicle” is not necessarily a “vehicle” as “vehicle” is defined in this section.

83 *Special event* means an event or activity for which a permit is issued pursuant to section 66-430, or an
84 event or activity taking place in a city-owned or city-controlled park, plaza, or other property for which written
85 permission is granted by the city.

86 *Special-event permit* means a permit issued pursuant to section 66-430, or the written permission granted
87 by the city for an event or activity taking place in a city-owned or city-controlled park, plaza, or other property.

88 Section 54-26 is amended by changing the definitions of “food,” “motor vehicle,” and “vehicle” to read:

89 *Food* means any raw, cooked, or processed edible substance including meat, meat food products, poultry,
90 poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human
91 consumption.

92 *Motor vehicle* means every vehicle that is self-propelled and every vehicle designed to run upon the streets
93 that is pulled by a self-propelled vehicle. The term excludes mobility vehicles. The term also excludes a vehicle
94 that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters
95 piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface.

96 *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn
97 upon a roadway. This term does not include a self-balancing nontandem two-wheeled device, designed to transport
98 one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

99 Sec. 5. Revision to section 54-88. Section 54-88 is revised to read:

100 **Sec. 54-88. Prohibition on use of sales vehicle and sales gear to sell on street right-of-way; vending machines.**

101 (a) Except to the extent authorized by this article (including section 54-91) or by provisions that are
102 authorized by this article to be placed in a permit, no person shall sell goods (i) using a sales vehicle on any street
103 right-of-way or core downtown park, or (ii) by placing, directly or indirectly, goods offered for sale or samples of
104 goods offered for sale on street right-of-way or core downtown park.

105 (b) This section does not prohibit right-of-way sales activities on the portion of a street that is closed or
106 blocked.

107 (c) This section does not prohibit or otherwise affect an automatic vending machine on a sidewalk that
108 sells only printed matter if the machine does not impede lawful travel on the sidewalk. To qualify under this
109 exception, the vending machine must also be placed so as to allow at least four feet of unobstructed space for
110 pedestrians. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the
111 greater distance applies. Without limiting the preceding two sentences, if within 200 feet of the vending machine,
112 there is no passing space for pedestrians that is at least five feet by five feet, the vending machine must be placed so
113 as to allow at least five feet of unobstructed space for pedestrians.

114 (d) Compliance with this article does not excuse or exempt any person from compliance with other
115 applicable laws.

116 Sec. 6. New section 54-91. The following section 54-91 is adopted:

117 **Sec. 54-91. Right-of-way sales activities.**

118 (a) *Exemption from section 54-88(a).* Right-of-way sales activities done in compliance with this section are
119 exempt from section 54-88(a), provided, however, that to qualify for this exemption, the only goods that may be
120 offered for sale or sold are (i) food and (ii) newspapers and other material the sale of which is protected by the First
121 Amendment to the U. S. Constitution through the application of the 14th Amendment to the U. S. Constitution. The
122 provisions of this section apply to only persons claiming an exemption from section 54-88(a).

123 (b) *Location on street right-of-way.* No person shall allow sales gear to be placed on any street right-of-
124 way other than sidewalk, core downtown park, or on-street parking space. The sales gear for one seller shall not be
125 placed in more than one on-street parking space.

126 (c) *Use of property of others.* No sales gear in the street right-of-way shall rest on or be attached directly or
127 indirectly to public or private property unless the seller or salesperson has permission of the property's owner or
128 other person who has authority to grant permission. This subsection does not prohibit resting sales gear on curbs
129 that are less than eight inches high and on surfaces on which driving motor vehicles or walking (other than steps) is
130 allowed.

131 (d) *Seating, tables, etc.* Sales gear shall not include seating for customers. Sales gear shall not include
132 tables or other surfaces that are used by customers to consume or use purchases from sellers. Sales gear may include
133 a maximum of one seat for each salesperson. Sellers and salespersons shall not allow customers to use those seats,
134 and customers shall not use those seats. No sales gear may be placed in a manner that prohibits a motor vehicle
135 from safely using a public or private driveway to gain access to and from a street.

136 (e) *Minimum distances.* No sales gear may be placed in a manner that prohibits a motor vehicle from safely
137 using a public or private driveway to gain access to and from a street. All sales gear must be placed so as to allow at
138 least four feet of unobstructed space for pedestrians on sidewalks, on pedestrian paths, and on other locations
139 intended primarily for pedestrian travel. If applicable law, including Americans with Disability Act regulations,
140 requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200
141 feet of sales gear, there is no passing space for pedestrians that is at least five feet by five feet, sales gear must be
142 placed so as to allow at least five feet of unobstructed space for pedestrians. All sales gear must be at least 10 feet
143 from crosswalks, bus stops, taxi stands, building entrances and exits, fire stations, police stations, fire hydrants, and
144 other sellers operating under this division. All sales gear must be at least 25 feet from street intersections. A street
145 intersection is the point at which the edge of one street's roadway meets the edge of another street's roadway. All
146 sales gear must be at least 20 feet from any automated teller machine and from all entrance doors and exit doors of
147 banks, credit unions, and savings and loan associations.

(f) *Distance from restaurants.* Sellers that offer to sell food must not, within 100 feet of the principal entrance for customers of a restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any sales-related transaction with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding. For purposes of this subsection, a restaurant is an establishment engaged in the business of preparing and serving meals at retail for pay. It must have a kitchen and inside seating for at least 10 individuals to eat food provided by the restaurant. The following are not included in determining seating capacity: (1) seats in a bar or lounge area; (2) seats in a separate room or section used exclusively for private functions; and (3) outside seats. “Inside” and “outside” refer to locations inside or outside a building. A “building” is a structure with walls and a roof. When it was erected, the building must have been designed and constructed to be usable for at least ten years, although it need not have been designed and constructed as a restaurant.

(g) *Garbage and recycling; litter.* Sellers and salespersons shall provide, on or within 15 feet of all sales vehicles, containers of sufficient size and number for the disposal of garbage and recyclables resulting from the sales. They shall be conspicuously identified as being available for the disposal of garbage or recyclables. At least once per hour of operation, and between 10 and 30 minutes after the last sale of the day, sellers and salespersons shall remove all litter (that is not in an appropriate container) resulting from the sales that has accumulated on, or within 15 feet of, sales vehicles. In complying with the preceding sentences of this subsection, City-provided containers shall not be used. Nothing herein is intended to limit the effect of City Code Chapter 10 (Garbage, Other Solid Waste).

(h) *Fire extinguishers.* When sellers and salespersons use a deep fat fryer, a flat top grill, or any other equipment that can produce grease vapors, they must have on the sales vehicle a minimum of 10 pounds-ABC type fire extinguisher. Sellers and salespersons shall immediately prove compliance with this subsection upon the request of the Manager or any sworn law enforcement officer.

(i) *Reserved.*

(j) *Parking and loading spaces.* If sales gear is placed in an on-street parking space, it must be done so as to comply with parking ordinances that apply to motor vehicles, including parking ordinances limiting the time that a parking space may be occupied. No sales gear shall be placed in loading zones.

(k) *Signs.* The only signs allowed are those that both (1) are securely attached to a sales vehicle and (2) promote, advertise, or facilitate the sale of goods sold by direct use of that sales vehicle. Signs shall have no other content. Only one sign per seller is allowed. In this subsection, “sign” is defined as in Article 11 of the Unified Development Ordinance (UDO). Nothing in this subsection shall be construed to limit the operation of the UDO, including Article 11 (Sign standards).

(l) *Reserved.*

(m) *Location of customer.* No part of any sales-related transaction with a customer of a seller, such as selling goods or accepting payment, shall be done while the customer is in a motor vehicle or on a roadway.

(n) *Unattended sales gear.* Sellers and salespersons shall remove all sales gear from street right-of-way when the sales gear is not attended by a responsible individual for longer than 10 minutes.

Sec. 7. Revisions to section 54-112. Section 54-112 is revised by replacing “sections 54-107 or 54-109” with “section 54-91” in subsections (a) and (b) and by adding subsections (c) – (f):

(c) *Definition of Durham Central Park.* For purposes of this section, Durham Central Park is (i) the area bounded on the west by Roney Street, on the south by Hunt Street, on the east by Foster Street, and on the north by the lot known as Parcel ID number 104939 on the records of the Durham County Tax Administrator’s Office, which lot is commonly known as 539 Foster Street, plus (ii) the area bounded on the west by Foster Street, on the south by Hunt Street, on the east by Rigsbee Avenue, and on the north by the Liberty Warehouse.

(d) *Definition of Central Park Zone.* For purposes of this section, the Central Park Zone is defined to be the following streets: Hunt Street between Morris Street and Rigsbee Avenue; Roney Street between West Corporation Street and West Morgan Street but excluding the portion of Roney Street that runs east-west and which ends at Morris Street; Foster Street between West Corporation Street and West Morgan Street; and Rigsbee Avenue between West Corporation Street and West Morgan Street.

(e) *Sales in Central Park Zone when special-event permit in effect for Durham Central Park.* During the time periods for which a special-event permit authorizing the use of any part of Durham Central Park is in effect, no person shall engage in right-of-way sales activities in the Central Park Zone, except to the extent the permit provides otherwise.

(f) *Sales in Central Park Zone when Durham Farmer's Market is open.* During the time periods that the Durham Farmer's Market is open for selling in any part of Durham Central Park, no person shall engage in right-of-way sales activities in the Central Park Zone. For purposes of applying this subsection, those time periods are the times, not exceeding a total of eight hours in any calendar week, which times are announced by the city manager or communicated in writing from time to time to the city manager by the operator of the Durham Farmer's Market, provided that such communications are received by the city manager at least 10 days in advance of the date of selling. For purposes of applying this subsection, the city manager is authorized to reject changes so communicated by the operator of the Durham Farmer's Market. The city manager may issue a permit allowing the operator of the Durham Farmer's Market to create exceptions to the prohibition established by the first sentence of this subsection. The permit may contain such terms and conditions as the city manager deems proper. This permit is revocable without cause at any time.

Sec. 8. Addition of sections 54-114, 54-115, 54-116, 54-117, and 54-118. The following sections are added:

Sec. 54-114. Sales near closed or blocked streets in conjunction with special-event permits. Except to the extent a special-event permit otherwise provides, no person shall engage in right-of-way sales activities within 300 feet of the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. The permit may reduce but may not enlarge that 300-foot limit. Except to the extent otherwise provided by the permit and subject to such terms and conditions as the city manager deems proper, the permittee may create exceptions to the prohibition established by the first sentence of this section on the closed or blocked street.

Sec. 54-115. Sales near permitted events in city parks, plazas, and properties.

(a) *Definition of permitted sales location.* When a special-event permit is in effect for a park, plaza, or other property and the park, plaza, or other real property is owned or controlled by the City, the places in such park, plaza, or other property where the permittee or other persons are authorized by the permit to sell goods or to authorize others to sell goods are collectively referred to in this section as the "permitted sales location."

(b) *Prohibition of right-of-way sales activities.* No person shall engage in right-of-way sales activities within 300 feet of a permitted sales location. If the permit does not specify where within or on the park, plaza, or other property a permitted sales location will be, but the permittee or other persons are authorized by the permit to sell goods or to authorize others to sell goods in or on the park, plaza, or other property, then no person shall engage in right-of-way sales activities within 300 feet of the center point of the main entrance for motor vehicles to the park, plaza, or property. If the permit authorizes activities that include selling goods on only a portion of the park, plaza, or other real property, no person shall engage in right-of-way sales activities elsewhere on the park, plaza, or other property. The permit may provide for exceptions to the prohibitions created by this subsection.

(c) *Authority to issue permits.* The city manager is authorized to issue the permits described in this section. The permit may contain such terms and conditions as the city manager deems proper. The permit may provide that only sellers specified in the permit, and/or only sellers authorized by the permittee, may sell goods on a specified portion or all of the park, plaza, or property. When there can be disagreement about the locations of the main entrance and its center point, the city manager may specify the locations, which specification shall be binding.

Sec. 54-116. Exemption for newspaper distribution. Except to the extent otherwise explicitly provided by an order or permit referred to in section 54-112, section 54-114, and section 54-115, the orders and permits shall not be construed to prohibit the distribution of newspapers within the nontraveled portion of any street. This rule of construction does not apply to the extent the newspaper distribution activities impede the normal movement of traffic on the street.

Sec. 54-117. Prohibitions cumulative. Where any combinations of section 54-112, section 54-114, and 54-115 and/or subsections in those sections apply, the conditions, prohibitions, and restrictions are cumulative unless the context requires otherwise or unless otherwise provided in an applicable permit.

Sec. 54-118. Right-of-way sales activities presumed subject to section 54-88. Unless otherwise provided, section 54-112, section 54-114, and 54-115 are subject to section 54-88 with respect to right-of-way sales activities.

Division 4. APPLICATION AND DISPLAY OF PERMITS

Sec. 9. Revisions to sections 54-140, 54-141, 54-188, 54-189, 54-190 and 54-191. Section 54-140 through section 54-141, and section 54-188 through section 54-191 are revised to read as follows:

Sec. 54-139. Permits to which division applies. The permits referred to in section 54-112, section 54-114 and section 54-115, including special-event permits, are deemed, for purposes of applying this division and division 5, to be required by this article and issued under this article.

Sec. 54-140. Display of permit. All individuals conducting any activity for which a permit is required under this article and all permittees shall (1) immediately show the permit upon request of the Manager or any sworn law enforcement officer, and (2) prominently display the permit at all times while conducting any activity for which a permit is required under this article so that the permit is easily seen and not covered and so that the text of the permit can be read by the public without their having to ask to see it. The manager may amend an already-issued permit to impose, as additional conditions of the permit, additional requirements respecting the posting of permits. Those amendments shall be effective on the fourth day after the notice of amendment is mailed to the permittee's address as stated in the permit application.

Sec. 54-141. Termination and revocation of permit; review of decisions.

(a) *Termination; grounds and procedure for revocation.* The manager may, at any time, terminate any permit issued under this article and any special-event permit referred to in this article for reasons satisfactory to the manager. In addition, the manager may revoke any such permit issued if:

- (1) the manager finds fraud, misrepresentation, or knowingly false statement with respect to a material fact in the permit application;
- (2) the manager finds that the permittee or the permittee's agent or employee violated this article or the terms of the permit;
- (3) the manager finds that the permittee or the permittee's agent or employee conducted an activity for which the permit is required in such a manner as to create a public nuisance, cause of a breach of the peace, violate any applicable Law, or interfere with the rights of abutting property owners;
- (4) in the case of a permit issued under section 54-110, the manager finds that the public safety or convenience of pedestrians is not served by the permit;
- (5) Reserved;
- (6) Reserved; or
- (7) Reserved.

Except in case of emergency, before making the decision to terminate or revoke, the manager shall give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked pursuant to this section even if the person making the findings pursuant to this section (the manager or chief of police, as applicable) had made a contrary finding before the permit was issued, regardless of whether the facts upon which the finding is made had changed.

(b) *Notice.* The manager shall cause a written notice of the revocation to be served on the permittee by first-class mail to the address shown on the permit application or by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the manager. The notice shall set forth a brief statement of the grounds for revocation and of the right to appeal.

(c) *Retention of fees; waiting period.* If the city revokes a permit, the city shall retain the fee paid for the permit. The person whose permit is revoked for grounds stated in subsection (a)(1) or (a)(2), regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or 30 days after the date of the revocation, whichever time period

is longer. The manager shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is the wife and the next year it is the husband, may be disregarded.

(d) *Review of decisions.* If the manager denies the issuance of a permit, revokes a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the city manager within ten days of the date of the notice of decision. The city manager or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The permittee and the manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the manager determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2), (a)(3), or (a)(4) will occur, re-occur, or continue during the review process.

DIVISION 5. - OTHER PROVISIONS

Sec. 54-188. Penalties for violations.

(a) *Assessment of civil penalties.* The manager shall assess civil penalties for violation of this article, including the terms of a permit. The manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the manager. The civil penalty shall be in an amount not to exceed \$300 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter. In determining the amount of the penalty, the manager shall consider the degree and extent of harm that the person of the offender and the person and property of others were exposed to or caused by the violation, the amount of money the offender saved or made by the noncompliance, whether the violation was committed willfully, and the prior record of the offender in complying or failing to comply with this article.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the manager may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The manager may compromise such claims, before or after commencement of the civil action, if the manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the manager may abandon a claim.

(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of motor vehicles, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.

(e) *Reserved.*

(f) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying section 1-9(e), the City Council intends that termination and revocation of a permit be considered to be remedies.

Sec. 54-189. Privilege license ordinance not affected; refund of privilege tax. This article is separate from the privilege license ordinance. Whether a privilege license tax is required does not affect whether an activity is lawful under this article. However, if a privilege license tax is paid, and the only activity that the license permits is entirely prohibited by this article for the entire time period for which the privilege license tax applies, the city shall refund the privilege license tax paid.

Sec. 54-190. Cumulative requirements. No provisions of the City Code, except those explicitly repealed or explicitly amended by the ordinance adopting this article, are repealed by this article. If any provision of this article allows an activity to occur but another provision of the City Code regulates or prohibits it, the more restrictive provision applies.

Sec. 54-191. Reservation of rights in City; other ordinances and N. C. DOT not limited.

(a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. The city reserves the right to require any activity allowed by this article or by a permit issued under this article to cease in whole or in part, for any purpose, including:

- (1) To allow for construction, maintenance, or repair of any street, sidewalk, utility, building, or facility;
- (2) To allow for use of a public street, sidewalk, utility, building, or facility in connection with parades, festivals, or other events;
- (3) To remedy a nuisance; or
- (4) To protect or promote the public health, safety, or welfare.

(b) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given.

(c) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or welfare, the city manager may, orally or in writing, order a seller or salesperson to immediately move such distance as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such order, the seller or salesperson shall comply. When such an order is not complied with (including because the seller or salesperson is not readily found), the city manager may cause objects in violation of the order to be removed, disposed of, or both, and the cost of such actions shall be borne by the offender. This subsection shall not be construed to limit subsection (a).

(d) Nothing in this division shall be construed to limit any other ordinance, including section 38-22 (Parking in city parks), section 66-108 (Driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-109 (Driving on sidewalk), section 66-116 (Operation in public parks), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of the N. C. Department of Transportation over rights-of-way under its jurisdiction.

Sec. 10. Appeals regarding special-event permits. Subsections 66-431(b) – (c) are revised to read:

(b) The order and permit shall be granted or denied within a reasonable time after the filing of the application. For provisions relating to issuance, appeals, termination, etc. of permits, see division 4 of chapter 54. For provisions relating to penalties, see division 5 of chapter 54.

(c) Reserved.

Sec. 11. Addition of section 66-433. The following section is added:

Sec. 66-433. Reservation of rights in City; other ordinances and N. C. DOT not limited.

(a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. The city reserves the right to rescind in whole or in part any order blocking or closing a street and to require any activity allowed by this article or by a permit issued under this article to cease in whole or in part. The city may exercise the authority listed in this subsection for any purpose, including:

(1) To allow for construction, maintenance, or repair of any street, sidewalk, utility, building, or facility;

(2) To allow for use of a public street, sidewalk, utility, building, or facility in connection with parades, festivals, or other events;

(3) To remedy a nuisance; or

(4) To protect or promote the public health, safety, or welfare.

(b) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given.

(c) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or welfare, the city manager may, orally or in writing, order a any person allowed to do any activity by this article or by a permit issued under this article to immediately move such distance as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such order, the individual shall comply. When such an order is not complied with, the city manager may cause objects in violation of the order to be removed, disposed of, or both, and the cost of such actions shall be borne by the offender. This subsection shall not be construed to limit subsection (a).

(d) Nothing in this division shall be construed to limit any other ordinance, including section 66-108 (Driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-109 (Driving on sidewalk), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of the N. C. Department of Transportation over rights-of-way under its jurisdiction.

(e) The principle that the expression of one thing is the exclusion of another is not to be used to construe this division to grant to the public any right to use property owned or controlled by the city.

Sec. 12. Effective date. This ordinance shall be effective at 9:00 A.M. on the thirtieth day after it is adopted. Special-event permits that were both issued before this ordinance is adopted and effective after this ordinance is effective are void. Permits issued before the effective date of this ordinance under sections 54-107, 54-108, 54-109, and 54-111 are rescinded, and no refunds of permit fees paid by the permittees will be made.

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